was convicted on that charge preferred against him in the Minor Offences Ordinance.

The substantial ground of appeal before me is now *autrefois convict*. The plea of *autrefois convict* is really a plea in Bar to trial and should be raised before pleading to the charge. However, the appellant was unrepresented at the trial. I may say that the Magistrate, when accepting the appellant's plea of guilty to the charge, was totally unaware of the earlier case under the Minor Offences Ordinance, the facts of which were never brought to his notice. In my view, the plea of *autrefois convict* now raised has no substance and must be dismissed. It is quite clear that, to enable an accused person to rely on that plea, the offence with which he is charged on the second occasion must be the same offence, or practically the same offence, as that with which he was charged on the first occasion. It is not enough to say that the evidence tendered on the second charge was the same evidence as that offered to prove the first charge. It is not the evidence which is material to the charge that governs the plea, but the offence which is charged. (*Kendrick and Smith*[1]). The offence of voluntarily causing hurt, quite clearly, is a different offence and a more serious offence than the simple charge of disorderly behaviour in a public place; the latter offence being established by the simple fact of two persons brawling in public. As Swift J. delivering the judgment in the case of *Kendrick and Smith*[1] pointed out :—

"It may well be that the evidence before the Court shows that both these offences have been committed, but that does not make them the same offence . . . . They are quite distinct and separate."

Again, as Aitken J. pointed out in the case of *Public Prosecutor v. Surjan Singh*[2], in considering the plea of *autrefois quit* :—

"The test is, rather, whether an acquittal on the first charge necessarily involves an acquittal on the second charge; and that is obviously not the case here as the ingredients of these two offences differ considerably from one another, and evidence which would establish the commission of one of them would not necessarily establish the other.

By analogy, the words "*autrefois convict*" may be substituted for the words "*autrefois acquit*", and the same argument applied. In applying that test to the facts of the case now before me it is abundantly clear that a conviction on the original charge of disorderly behaviour would not necessarily involve a conviction on the later charge of voluntarily causing hurt. The ingredients of the two offences differ considerably from one another, and evidence which would establish the commission of the offence of disorderly behaviour would not necessarily establish the offence of voluntarily causing hurt, or *vice versa*.

There is, in my view, a further aspect of the matter which requires consideration. The original charge of disorderly behaviour was brought by the Police. I suppose that a policeman saw the complainant and the appellant fighting or brawling and, without troubling to consider which of the two was at fault, charged them both. It seems to me that it would be a complete denial of justice if, in fact, one of the two parties was innocent and, simply because of the original charge of disorderly behaviour brought against them both, he should be precluded from his undoubted right to apply by way of complaint to the Magistrate for a Summons to issue against the other party, who had caused him injury in an assault in which he was in no way to blame.

For these reasons the appeal is dismissed as against conviction. I see no reason to interfere with the sentence and the appeal against sentence in also accordingly dismissed.

Appeal dismissed.

HENG HWANG KONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Hill J.) August 4, 1956]

[Alor Star — Criminal Appeal No. 32 of 1956]

Dangerous Drugs Ordinance, 1952, s. 30(2) — Forfeiture of lorry — Onus on owner of lorry to shew that offence was committed without his knowledge, consent or connivance.

In this case the appellant appealed against the order of the President of the Sessions Court by which the appellant's lorry was forfeited under section 30(2) of the Dangerous Drugs Ordinance, 1952. It was argued that it was necessary to establish some degree of complicity on the part of the owner of a vehicle before the forfeiture of the vehicle can be ordered.

Held: (1) under section 30(2) of the Dangerous Drugs Ordinance, 1952 it is not incumbent on the prosecution to prove complicity on the part of the owner;

(2) in order to avoid forfeiture the owner must prove to the satisfaction of the Court that the offence was committed without his knowledge, consent or connivance and as the appellant in this case had failed to discharge the onus on him, the order for forfeiture was rightly made.

Case referred to :—

(1) *Public Prosecutor v. Lim Geok Ching & Anor.* (1949) M.L.J. 154.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Thean-Chu for the appellant.

B. Sheldon (Federal Counsel) for the respondent.

Hill J. : — This is an appeal against an order of the Acting President of the Sessions Court by which the appellant's lorry was forfeited under section 30(2) of the Dangerous Drugs Ordinance, No. 30 of 1952.

It was argued by Mr. Lee Thean-Chu on behalf of the appellant that the learned President had not exercised his discretion judicially; that he had wrongly drawn unfavourable inferences against the appellant from the evidence when other and more favourable inferences could have been drawn and that the appellant had discharged the onus cast on him by section 30 of the Ordinance.

Mr. Lee Thean-Chu referred me to certain decisions only one of which I feel might be considered as being relevant to this appeal. It is that of Pretheroe J. in *Public Prosecutor v. Lim Geok Ching & Tan Yow*[1]. That decision was concerned with the law as stated in paragraph 17(1) of the Opium and Chandu Proclamation, since repealed, and which read as follows :—

"All opium and chandu in respect of which any offence under this Proclamation or any breach of any rule made thereunder has been or is being committed together with the utensils, vessels, packages, vehicles and conveyances in which the same may be found or which may have been used in connection with such offence or breach, may be seized by any Chandu Officer and, if seized, may be forfeited by order of the District Court having jurisdiction in the district in which the same was seized, provided that no order of forfeiture of any vessel shall be made if such vessel exceeds one hundred tons burden."

Pretheroe J. held that in the case of a highly penal provision like that contained in paragraph 17(1) of the Opium and Chandu Proclamation, it is necessary to establish some degree of complicity on the part of the owner of a vehicle before the forfeiture of the vehicle can be ordered.

But that decision cannot be applied to the very different situation in which an owner is now placed by section 30(2) of Ordinance No. 30 of 1952 which reads as follows :—

"When any dangerous drug, in respect of which any offence under this Ordinance, or any breach of the restrictions or conditions subject to or upon which any licence has been granted has been or is being committed, is found in any conveyance, such conveyance may be seized by any officer of customs or police officer and, subject to the provisions of sub-section (3) of this section shall be forfeited, unless it is proved, to the satisfaction of the Court, that the offence or breach had been or was being committed without the knowledge, consent or connivance of the owner."

It is no longer the duty of the prosecution to prove some degree of complicity on the part of the owner. On the contrary, to avoid forfeiture the owner must prove to the satisfaction of the Court that the offence was committed without his knowledge, consent or connivance.

In my opinion the appellant in the case under review clearly failed to discharge this onus. I cannot agree that the learned President drew wrong inferences or that from the evidence different inferences more favourable to the appellant could have been drawn. Moreover, for very good reasons the President did not believe the appellant and I consider he was correct in finding that the owner (appellant) had failed to prove to his satisfaction that the offence was committed without his knowledge, consent or connivance.

The appeal is accordingly dismissed.

Appeal dismissed.

In re LOO MOH SAI

[Cr. R. J. (Rigby J.) August 16, 1956]

[Penang — Criminal Revision No. 15 of 1956]

Criminal Trial — Sentence — Corporal punishment — Penal Code s. 379.

In this case the accused pleaded guilty to the theft of three fowls contrary to section 379 of the Penal Code. He was sentenced 2 years' imprisonment and ten strokes of the rattan.

Held: corporal punishment should not be imposed against adults except in cases involving violence and therefore the sentence of corporal punishment in this case should be set aside.

Cases referred to :—

(1) *Endut bin Bakar v. Public Prosecutor* noted under Editorial Note (1956) M.L.J. 84.

(2) *Mohamed Ali v. Public Prosecutor* (1956) M.L.J. 84.

CRIMINAL REVISION.

Rigby J. : — The accused in this case, a young man aged 28, pleaded guilty to the theft of three fowls valued at $10, contrary to section 379 of the Penal Code.

The brief facts of the case are that the complainant was awakened at night by the sound of a noise coming from the compound in which he kept his fowls. He went out and there in the compound, by the light of his torch, he saw a man. He gave chase and the man ran away and escaped. Close by the fowl house the complainant found a bicycle, a shirt and a pair of slippers. He also found three fowls with their legs tied together. Obviously they had been so tied by the thief with the object of stealing them and carrying them away, but he had been disturbed before he was able to do so. The accused was arrested the following day and the bicycle, shirt and slippers identified as his property. There was no doubt that he was, in fact, the thief and was disturbed by the complainant at